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PART I

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Kerala Gazette No. 16 dated 19th April 1983
PART 1

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 73/83/LBR. *Dated, Trivandrum, 20th January 1983.*

The award of the Labour court, Quilon in respect of the dispute between Shri P. Sathrughnan Pillai, Managing Partner, Indian Nut Products, Puthenthodu, Quilon and his workman Sri Sasikaladharan Pillai, Pukayilpura Veedu, Manakkara Muri, Sasthamcotta received by Goverument on 5-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Quilon

Dated, this the 29th day of December, 1982

Present:

Shri T. V. Kunhahamed, B. A., B.L,
Presiding Officer

In

INDUSTRIAL DISPUTE NO. 19/81.

Between

Sasikaladharan Pillai,
Pukayilpura Veedu,
Manakkara Muri,
Sasthamcotta.
Petitioner (Worker)

And

P. Sathrughnan Pillai,
Managing Partner,
Indian Nut Products,
Puthenthodu,
Quilon.
Opposite Party (Management)

GA. 16/L.

Representations:–

Advocates S. Savithry, P. S. Saraswathy Amma, S. Prabhavathy & C. J. Angel Mary ..	*For* the Petitioner
Advocates K. Velappan Pillai, and .. K. Nadaraja Pillai.	*For* the Management.

AWARD

1. The denial of employment to Shri C. Sasikaladharan Pillai, Manager is the issue referred for adjudication by the Government of Kerala as per G. O. (Rt.) 606/80/LBR dated 9-5-1980.

2. Shri Sasikaladharan Pillai (hereinafter referred to as the workman) was employed as a clerk in the Indian Nut Products Cashew Factory, belonging to a firm by name Indian Nut Products (hereinafter referred to as the management). Shri P. Sathrughnan Pillai is the Managing Partner of the management firm on 18th September, 1973 the workman who was employed as a clerk became the Manager of the factory. He continued as such till 30th December, 1978. There are the admitted facts of the case. The workman's case is that even after the change of designation as manager, he continued to do the work of a clerk, that there was no change in the work as well as in the emoluments, that on the evening of 30th December, 1978 the Managing Partner directed him to accompany him to Sultans Battery the next morning, that he explained his difficulties then and there as well as on the morning of the 31st and the Managing Partner told him that if he was not prepared to go over to Sultans Battery he shall cease to be an employee of the firm. The case of the management is that after he was appointed as manager the workman was exercising managerial functions and he was not doing the work of clerk, that on 30th of December an order was issued transferring him as Manager of the Coffee Estate near Sultans Battery that the workman did not report for duty and subsequently another notice was issued informing him that if he does not report for duty at Sultans Battery he shall cease to be an employee of the firm and he has not reported for duty as directed. The workman would contend that after 30th of December, he used to report for duty on all days and no work was allotted to him and he was not even allowed to see the Managing Partner and therefore he sent an application on 15th January, explaining the circumstances, and seeking readmission to duty. The receipt of the application is admitted by the management. The management has taken up a stand that since the workman has failed to report for duty at Sultans Battery he has abandoned the job. They have a further case that since the workman was performing managerial functions, the Industrial Disputes Act is not applicable to him. It has already been seen that the case of the workman is that even after the change of designation he continued to do clerical work and therefore he is a

workman as defined in the Industrial Disputes Act. The second contention is that even after 30th of December, when he was given the oral directions to go over to Sulthans Battery he used to attend office and he was denied employment. Therefore the questions for consideration are (1) Whether Shri Sasikaladharan Pillai is a workman as defined in the Industrial Disputes Act and (2) Whether employment has been denied to him.

3. It is more or less common ground that after the change of designation there was no change in emoluments The workman was employed as a clerk and even after the change of designation he continued to receive the same salary. The workman who was examined as WW1 has stated that even after change of designation there was no change in emoluments. The Managing Partner who was examined as MW1 stated that he does not know whether there was any change in emoluments.

4. According to WW1 even after the change of designation he continued to do more or less the same work. He stated in examination-in-Chief that after the change of designation he had to do the Manager's work also in addition to his duties as a clerk. He had no power to appoint or dismiss workers. The witness admitted in cross-examination, that he had taken action against other workers in his capacity as Manager. He added that those things were done by him as directed by MW1. He admitted that there are no documents to show that he took action against the workers as per directions. According to him the proprietor used to issne directions over phone. In 1978 the Private Cashew Factories were taken over by the Kerala State Cashew Development Corporations. Ext. M9 is the letter sent by the Management to the Kerala State Cashew Development Corporation authorising the workman who was described as the Manager of the Factory to sign the registers to be maintained by the Corporation in the Factory. The workman has signed as manager in Ext. M10 the list of employees handed over to the K.S.C.D.C. Similarly, he had signed Ext. M11 the statutory notice showing the national and festival holidays. All the above documents are relied on by the management to show that the workman was in fact exercising managerial functions and the case now put forward by him that even after the change of designation, he continued to do the same work, is not trne.

5. The workman has put forward a case, that there was another manager by name Padmanabhan Nair, who was controlling him. Padmanabhan Nair used to go to the factory three or four times a day. The workman could not say whether the designation of Padmanabhan Nair is General Manager. He admitted that the person responsible for conducting the day to-day affairs of the factory was himself. The workman stated in re-examination that after he became the manager he used to do all the previous work except weighing and that whenever he had occasion to find fault with any subordinate he used to report the matter to the proprietor and used to act according to the proprietor's directions.

6. According to MW1 the workman was performing managerial functions and he had taken disciplinary action against the subordinated

using his own discretion. The witness stated in cross-examination, that when the workman was made the Manager there were two clerks and another clerk was appointed to do the work which was previously done by WW1. The witness stated that he was prepared to produce documents to show that a new clerk has been appointed. The witness does not remember the name of the clerks who were working with WW1 as well as the name of the newly appointed clerk. The witness admitted that, the workman has not executed any contract representing the management and that he had no power to operate any bank account. He denied the suggestion that even after appointment as manager WW1 doing all the clerical work which was previously done by him. The witness asserted that the weighing work and the work of writing wages were taken away. The witness further stated, that before and after the change of designation, the workman and other clerks used to write E.S.I. account as well as the Provident Fund Account. The witness could not say whether Ext. M 20 is in the hand writing of WW1. He admitted that daily report and the leave with wages register used to be written by WW1 and others before and after the change of designation. The witness could not say whether there was any change in the emoluments after WW1 was made the Manager. He does not know the pay scale of the Manager. The Proprietor does not know whether there is differences between the wages of the Manager and the Clerk.

7. The question to be decided is whether even after the change of designation the workman's main work was clerical in nature or whether it was managerial or administrative. The management has relied on some documents to show that the workman's duties were managerial in nature. Ext. M1 is the copy of the application for renewal of the licence for the year 1977. The workman has put the signature as against the signature of the Manager. Further the entry in column 7 shows the name of the workman as the name of the Manager Ext. M2 is a notice issued by the workman to some workers threatening them with disciplinary actions. The workman has signed the document as manager. Exts. M3, M4, M5 and M6 are similar notices, Ext. M7 is a notice issued by the workman in his capacity as manager informing the workers that regular work would commence from 13 September, 1977. Ext. M8 is the notice issued by the workman in his capacity as Manager calling upon another worker to show cause why action should not be taken against the letter for alleged irregularities. Ext. M9 is the letter sent by the Managing Partner to the Kerala State Cashew Development Corporation informing them that the workman who is the manager of the Cashew Factory at Sasthamkotta has been authorised to sign the registers which will be maintained by the corporation in the factory. Ext. M10 the list of employee has been signed by the workman in his capacity as the Manager of the factory. Ext. M11 is the approved list of the national and festival holidays for the year 1978 and the same has been signed by the workman. Ext. M12 is the salary bill for the first half of the month of August 1978 and the same has been signed by the workman. The workman's name is not included in the salary bill. Ext. M13 is a letter

sent by the workman in his capacity as manager to the Regional Director of the E. S. I. Corporation.

8. The case of the Workman is that for the purposes of the factory's Act the name and address of one Employee has to be given as the name of the Manager and his name was shown as the name of the Manager for that purpose only. It was argued by the Learned Counsel for the workman that her contention is strengthened by the fact that when her client's designation was changed a substitute was not appointed in his place. The further contention is that the notices were issued by him as directed by the Managing Partner or by the real Manager who visits the factory more than once in a day. The name of that Manager has been given by the workman as Padmanabhan Nair and the suggestion made in cross-examination would indicate that the case of the management is that Padmanabhan Nair is the General Manager and not the Manager. Whatever it be the workman's case is that he had not issued the notices above referred to using his discretion as manager, but obeying the orders of the superiors. The Managing Partner who was examined as MW1 stated that all the notices were issued by the workman using his discretion and not according to the directions issued by the Head Office. It has to be seen as to which of the versions is more probable. The Managing Partner is either unaware of the day to-day working of the establishment or he is not speaking the truth while answering questions regarding the affairs of the factory. He had stated that a substitute was appointed in the place of the workman when he was elevated to the position of Manager. But he could not give the name of the substitute. Similarly, the Managing Partner does not know the pay scale of the clerk employed by him as well as the pay scale of his Manager.

9. According to the workman, the direction to go to Sultans Battery was an oral one. The Management has attempted to show that the written orders were issued to the workman. Ext. M18 is the copy of the order dated 30th December, 1978. Ext. M19 dated 7th January, 1979 is the copy of the letter informing the workman that if he does not comply with Ext. M18 within 5 days it shall be presumed that he has relinquished the job. The case of the workman is that the originals of Ext. M18 and M19 were not received by him. The copies do not show that the workman had acknowledged receipt of the originals. The version given by MW1 is that Ext. M18 was given by his manager Balakrishna Pillai in his presence. The witness stated that the workman did not object when the originals of Ext. M18 was given to him Ext. M17 dated 9-10-1979 is a reply given by the management to the letter sent by the Deputy Labour Officer, Quilon concerning the denial of employment to Sri Sasikaladharan Pillai. MW1 stated that copies of Ext. M18 and M19 were sent along with the originals of Ext. M17. But Ext. M17 does not show that other documents were sent along with that communication. The witness admitted in cross-examination that the signature of the workman was not taken in Ext. M18 and that there are no documents to show that Ext. M18 has been

handed over to the workman. Similarily, there are no documents to show that the original of Ext. M19 has been sent by post. The witness denied the suggestion that Ext. M18 and M19 were created for the purpose of this proceeding. Ordinerally a person like MW1 would take the precaution of taking acknowledgement of the party on an important communication like Ext. M18 or would send by registered post a very important communication like Ext. M19. The Manager by name Balakrishnan Nair who is alleged to have delivered the original of Ext. M18 to the workman has not been examined. The Management has no case that the Sastamcotta Factory had another Manager other than the workman. The Balakrishna Pillai mentioned by MW1 should be the Manager of some other factory or the Manager who had replaced the workman. If Balakrishna Pillai is the Manager who had replaced the workman there would be some documents to show that he had taken the place of the workman. As it is the management has miserably failed to establish its case that Ext. M18 and M19 were received by the workman. I am inclined to accept the case of the workman that Exts. M18 and M19 were made for the purpose of this proceeding. Thus it is seen that the management is prepared to go to any extent in order to get rid of the workman. The version given by MW1 and WW1 regarding nature of the duties of the workman have to be weighed in this context. Further as a rule managers of individual concerns do not take decisions without consulting the Proprietor or the Managing Partner or the Managing Director as the case may be. In the circumstances I accept the case of the workman that whatever communications he had sent to other workers were sent by him as oraly directed by the Managing Director or by Padmanabhan Nair the so called General Manager. At the same time I am not inclained to go to the extent of holding that the workman was not exercising managerial functions. In fact he was running the day-to-day affairs eventhough he was taking decisions only after consulting the General Manager or the Managing Partner. Merely because an employee had exercised come managerial functions he does not go out of the defenition of workman. Sub Clause 3 would apply only if the person concerned was employed mainly in a managerial or Administrative Capacity. In the instant case there is ample evidence to show that even after the change of designation, the workman had continued to do clerical work and that two items of work alone were taken away from him. Those two items were weighment and the work of writing wages. The workman continued to do all the other items of clerical work which he was doing prior to the change of designation. That there has been no change in the emoluments is also an indication to show that there was no substantial change in the nature of the duties. I would therefore, conclude that Sri Sasikaladharan Pillai is a workman as defined in the Industrial Disputes Act.

10. It has already been seen that the communications regarding the transfer of the workman evidenced by M18 and M19 were not really sent to him. It follows that the case of the workman that there was only an oral direction asking him to accompany the Managing Partner on the morning of the 31st December, is true. The workman has shown that he

had pointed out his difficulties to the Managing Partner on the evening of the 30th when the oral direction was given and on the morning of the 31st and the Managing Partner had informed him that he shall cease to be an employee if he fails to comply with the directions. The case of the workman is that from the morning of the 31st he used to report for duty and no work used to be alloted to him and therefore he sent Ext. M15 dated 15th January, 1979 to the Managing Partner. The case of the Management is that since the workman has failed to comply with the original or Ext. M19 it was presumed that he had relinquished the job. The case regarding Exts. M18 and M19 has already been found against. In the circumstances the only possible conclusion is that after the morning of the 31st of December, 1979 the management had refused to give the workman any work. I would therefore, conclude that the denial of employment alleged by the workman is true.

11. The next aspect to be considered is regarding the proper order to be passed. It follows from my finding that the workman is a workman as defined in the Industrial Disputes Act and that employment has been denied to him that there should be an order for reinstatement. The workman had not obeyed the oral direction transferring him to Sultans Battery. The excuse given is that the transfer was too sudden and he did not get sufficient time for making adequate arrangements for the protection of his family consisting of his wife and two small children. There is nothing on record to show that the workman had asked the Managing Partner to give him some time for making proper arrangements. Actually the workman had never expressed his willingness to comply with the direction. Therefore the workman is not entitled to back wages from 31st December, till the date of reinstatement.

In the result I pass an award directing reinstatement of Shri Sasikaladharan Pillai but without back wages.

This award shall come into force on the expiry of thirty days from the date of publication in the Government Gazette.

Dictated to the Confidential Assistant, transcribed by her, corrected and signed by me this the 29th day of December, 1982.

T. V. KUNHAHAMED,
Presiding Officer.

Appendix

1. *Witness examined on the side of the Management:-*

MW1 P. Sathrughnan Pillai, Managing Partner, Indian Nut Products.

2. *Exhibits marked on the side of the Management:-*

Exhibit M1. Form No. 2 dt. 22-10-1976 signed by the Managing Partner.
Exhibit M2. Notice dt. 19-3-1976 of the Manager.
Exhibit M3. Notice dt. 22-3-1976 of the Manager.
Exhibit M4. Notice dt. 8-6-1977 of the Manager.
Exhibit M5. Notice dt. 21-6-1977 of the Manager.
Exhibit M5a. Letter dt. 21-6-1977 of Shri M. K. Raghavan Pillai addressed to the Manager.
Exhibit M6 Notice dt. 31-5-1976 of the Manager.
Exhibit M7. Notice dt. 12-9-1977 of the Manager.
Exhibit M8. Notice dt. 2-9-1977 of the Manager.
Exhibit M9 Letter dt. 26-8-1978 of the Indian Nut Products addressed to the K. S. C. D. C.
Exhibit M10. List of the articles of M/s. Indian Nut Products.
Exhibit M11. Approved list of National and Festival Holidays for the year 1978 for the Cashew Factory owned by the Indian Nut Products at Sasthamcotta.
Exhibit M12. Salary bill for the month of August 1978 for the factory at Sasthamcotta.
Exhibit M13. Letter dt. 17-6-1978 from the Manager I. N. P. addressed to the Regional Director, E. S. I. Corporation TCR-1.
Exhibit M14. Attendance Register.
Exhibit M15. Letter dt. 15-1-1979 of Shri Kaladharan Pillai.
Exhibit M16. Letter dt. 20-4-1979 of Shri Sasikaladharan Pillai, addressed to the D. L. O., Quilon.
Exhibit M17. Letter dated 9-10-1979 of the I. N. P. addressed to the Deputy Labour Officer, Quilon.
Exhibit M18. Letter dated 30-12-1978 of I. N. P. addressed to Shri Sasikaladharan Pillai.
Exhibit M19. Letter dated 7-1-1979 of the I. N. P. addressed to Shri Sasikaladharan Pillai.
Exhibit M20. Muster Role of Shelling Section for 1977.

3. *Witness examined on the side of the worker:-*

WW1. G. Sasikaladharan Pillai.

4. *Documents marked on the side of the worker:-*

Nil.

GOVERNMENT OF KERALA

Revenue (B) Department

NOTIFICATION

No. 57056/B1/82/RD. *Dated, Trivandrum, 2nd December* 1982.

S. R. O. No. 463/83.—Under subsection (1) of section 52 of the Kerala Land Acquisition Act, 1961 (21 of 1962), the Government of Kerala hereby withdraw from the acquisition of land mentioned in the Schedule hereto annexed in respect of which Notification No. G. 11845/78 dated the 28th September, 1981 under subsection (1) of section 3 of the said Act has been published at page 2181 of Part III of the Kerala Gazette dated the 10th November, 1981.

SCHEDULE

District—Cannanore.

Taluk—Cannanore *Village & Desom*—Puzhathy

Sy. No.—R. S. 88/1(pt.)
Classification—Occupied Dry
Extent—0.0405 Hectare.

Explanatory Note

(This is not a part of the notification, but is intended to indicate the general purport).

There was a proposal to acquire 0.0405 Hectare of land in R. S. No. 88/1(pt.) of Puzhathi desom in Cannanore Taluk for shifting the kudikidappu of Smt. Chaluparambil Ammalu on allowing the application under section 75(3) of the K.L.R. Act 1963 filed by Smt. Kunduvalappil Pathunhi of Puzhathi amsom Kakkad desom in Cannanore Taluk. The applicant and kudikidappukari have filed a joint petition before the Revenue Divisional Officer, Tellicherry on 16-11-1981 stating that the matter has been settled out of Court and therefore there is no need to proceed further in the matter. It is therefore, necessary to withdraw from the acquisition of the above land. The notification is intended to achieve the above object. No compensation is payable under section 52 (2) of the K. L. A. Act as no damage has been cause to the interested parties due to the land acquisition.

എസ്. ആർ. ഒ. നമ്പർ 463/83.—1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21) 52-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പു പ്രകാരം കേരള സർക്കാർ ഇതോടൊന്നിച്ച് ചേർത്തിട്ടുള്ള പട്ടികയിൽ പറഞ്ഞിട്ടുള്ളതും 1981 നവംബർ 10-ാം തീയതിയിലെ കേരള ഗസററിൽ 3-ാം ഭാഗത്ത് 2181-ാം പേജിൽ പ്രസിദ്ധപ്പെടുത്തിയ 3-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പുപ്രകാരമുള്ള 1981 സെപ്റ്റംബർ 28-ാം തീയതിയിലെ ജി. 11845/73 എന്ന നമ്പർ വിജ്ഞാപനം പുറപ്പെടുവിച്ചിട്ടുള്ളതുമായ സ്ഥലം വിലയ്ക്കെടുക്കുന്നതിൽ നിന്നും ഇതിനാൽ പിൻവാങ്ങുന്നു.

ജില്ല - കണ്ണൂർ.

താലൂക്ക്—കണ്ണൂർ. വില്ലേജും ദേശവും—പുഴാതി

സർവ്വെ നമ്പർ—റിസർവ്വെ 88/1/ഭാഗം

വിവരണം—പുരയിടമായി ഉപയോഗിക്കുന്നത്

വിസ്തീർണ്ണം—0.0405 ഹെക്ടർ

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിന്റെ ഭാഗമല്ല. എന്നാൽ പൊതുഉദ്ദേശം സൂചിപ്പിക്കുവാനുദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

കണ്ണൂർ താലൂക്കിൽ കക്കാട് ദേശം, പുഴാതി അംശത്തിൽ ശ്രീമതി കുണ്ടുവളപ്പിൽ ചാത്തുണ്ണി ഫയൽ ചെയ്ത 1963-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് 75 (3) വകുപ്പിൻ കീഴിൽ അപേക്ഷ അനുവദിച്ചതിൻ പ്രകാരം ശ്രീമതി ചാലുപറമ്പിൽ അമ്മാളുവിന്റെ കുടികിടപ്പ് മാററുവാൻവേണ്ടി കണ്ണൂർ താലൂക്കിൽ പുഴാതി ദേശത്ത് റീ. സ. 88/1 (ഭാഗം) 0.0405 ഹെക്ടർ ഭൂമി ഏറെറടുക്കുന്നതിന് ഒരു നിർദ്ദേശം ഉണ്ടായിരുന്നു. കോടതി മുഖാന്തിരമല്ലാതെ സംഗതി ഒത്തുക്കി തീർത്തുവെന്നും ആയതിനാൽ ഇക്കാര്യത്തിൽ അനന്തര നടപടി ആവശ്യമില്ലായെന്നും സൂചിപ്പിച്ചുകൊണ്ട് തലശ്ശേരി റവന്യൂ ഡിവിഷണൽ ആഫീസർ മുമ്പാകെ 16-11-1981-ൽ അപേക്ഷകയും കുടികിടപ്പുകാരിയും ഒരു കൂട്ടുഹർജി ഫയൽ ചെയ്തിട്ടുണ്ട്. ആയതിനാൽ മുകളിൽപറഞ്ഞ ഭൂമിഏറെറടുക്കുന്നതിൽ നിന്നും പിൻവാങ്ങേണ്ടത് ആവശ്യമായി വന്നു. മുകളിൽ പറഞ്ഞ ഉദ്ദേശം നേടിയെടുക്കുന്നതിനുവേണ്ടിയാണ് ഈ വിജ്ഞാപനം. സ്ഥലമെടുപ്പു നടപടികൾമൂലം യാതൊരു നഷ്ടവും ബന്ധപ്പെട്ട കക്ഷികൾക്ക് ഉണ്ടാകാത്തതുകൊണ്ട് കേരള സ്ഥലമെടുപ്പ് ആക്റ്റിലെ 52(2) വകുപ്പുപ്രകാരം യാതൊരു നഷ്ടപരിഹാരവും കൊടുക്കേണ്ടതില്ല.

By order of the Governor,

K. NARAYANAN,
Deputy Secretary to Government.

Kerala Gazette No. 16 dated 19th April 1983.
PART I

GOVERNMENT OF KERALA

Revenue (B) Department

NOTIFICATION

No. 37128/B1/82/RD.

Dated, Trivandrum, 30th November 1982.

S.R.O. No. 464/83.—Under subsection (1) of section 52 of the Kerala Land Acquisition Act, 1961 (21 of 1962), the Government of Kerala hereby withdraw from acquisition of the land mentioned in the Schedule hereto annexed in respect of which Notification No. 36108/B1/80/R.D. dated the 27th June 1980 under sub-section (1) of section 3 of the said Act has been published at pages 1—2 of section IV of Part I of the Kerala Gazette dated the 8th July, 1980.

SCHEDULE

District—Kozhikode.
Village—Kasaba.

Taluk—Kozhikode.
Desom—Kalathinkunnu.

Block—3
Ward—4
Sy. No.—T.S. No. 92/1A
Description—Garden
Extent—0.0486 hectare.

Explanatory Note

(This is not part of the Notification but is intended to indicate the general purport.)

The acquisition proceedings in respect of the land mentioned in the notification were initiated as required by the Lakshadweep Harbour Works Department. That Department has now informed that they have made alternate arrangements for their office building and have requested to drop the acquisition. This has necessitated withdrawal from the acquisition. No compensation is payable under section 52 (2) of the K. L. A. Act due to this withdrawal. The notification is intended to achieve the above object.

G. 1820

എസ്. ആർ. ഒ. നമ്പർ—464/83.—1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21-ാം ആക്റ്റ്) 52-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പു പ്രകാരം കേരള സർക്കാർ ഇതോടൊന്നിച്ച് ചേർത്തിട്ടുള്ള പട്ടികയിൽ പറഞ്ഞിട്ടുള്ളതും 1980 ജൂലൈ 8-ാം തീയതിയിലെ കേരള ഗസററിന്റെ 1-ാം ഭാഗത്തു 4-ാം വകുപ്പു 1-ം 2-ം പേജുകളിൽ പ്രസിദ്ധപ്പെടുത്തിയ പ്രസ്തുത ആക്റ്റ് 3-ാം വകുപ്പു 1-ാം ഉപവകുപ്പു പ്രകാരമുള്ള 1980 ജൂൺ 27-ാം തീയതിയിലെ 36108/ബി1/80 ആർ. ഡി. എന്ന നമ്പർ വിജ്ഞാപനം പുറപ്പെടുവിച്ചിട്ടുള്ളതുമായ ഭൂമി വിലയ്ക്കെടുക്കുന്നതിൽ നിന്നും ഇതിനാൽ പിൻവാങ്ങുന്നു.

പട്ടിക

ജില്ല—കോഴിക്കോട് | താലൂക്ക്—കോഴിക്കോട്

വില്ലേജ്—കസബ | ദേശം—കളത്തിൽകുന്ന്

ബ്ലോക്ക്—3

വാർഡ്—4

സർവ്വേ നമ്പർ—ററി. എസ്സ് 92/1എ

വിവരണം—ഗാർഡൻ

വിസ്തീർണ്ണം—0.0486 ഹെക്ടർ

വിശദീകരണക്കുറിപ്പ്

(ഇതു വിജ്ഞാപനത്തിന്റെ ഭാഗമല്ല, എന്നാൽ പൊതു ഉദ്ദേശം വ്യക്തമാക്കുന്നതിനു ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

വിജ്ഞാപനത്തിൽ പറഞ്ഞിരിക്കുന്ന സ്ഥലം പൊന്നും വിലയ്ക്കെടുക്കുന്നതിനുള്ള നടപടികൾ തുറമുഖ നിർമ്മാണവകുപ്പ് ആവശ്യപ്പെട്ടതനുസരിച്ചാണ് ആരംഭിച്ചത് എന്നാൽ ആഫീസ് കെട്ടിടത്തിനു മററു ഏർപ്പാടുകൾ ചെയ്തിട്ടുണ്ടെന്നും മേൽപ്പറഞ്ഞ സ്ഥലത്തെ സംബന്ധിച്ച് പൊന്നുംവില നടപടികൾ ആവശ്യമില്ലായെന്നും ആ വകുപ്പ് ഇപ്പോൾ അറിയിച്ചിരിക്കുകയാണ്. അതിനാൽ പൊന്നുംവില നടപടികളിൽ നിന്നും പിൻവാങ്ങേണ്ടി വന്നിരിക്കുന്നു. കേരള സ്ഥലമെടുപ്പു നിയമത്തിലെ 52 (2) വകുപ്പുപ്രകാരം നഷ്ടപരിഹാരം നൽകേണ്ടതില്ല. മേൽപ്പറഞ്ഞ ഉദ്ദേശം സാധിക്കുന്നതിനുള്ളതാണ് ഈ വിജ്ഞാപനം.

By order of the Governor,

K. NARAYANAN,

Deputy Secretary to Government

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G. O. MS. No. 50/83/H. Edn. *Dated, Trivandrum, 14th March* 1983.

S. R. O. No. 465/83.—In exercise of the powers conferred by subsection (1) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the Schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala, and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following Scheme for administration of the said property, the same having been previously, published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966, and appoint the date of publication of this notification to be the date on which the said scheme shall come into operation, namely:—

SCHEME

1. This Endowment may be called the "Tharamel R. Balakrishna Pillai Endowment Fund".

2. The corpus of the Endowment shall consist of Rs. 1000 (Rupees One thousand only) and shall be vested with the Treasurer of Charitable Endowments, Kerala.

3. The corpus of the Endowment shall be invested in any long term securities of the Government of India or the Government of Kerala or in any of the securities approved by the Government of Kerala.

4. The Headmaster/Headmistress, Government P.V. High School, Perumkulam, Kottarakara shall be the Administrator of the Fund.

5. The annual interest accruing on the fund shall be utilised during the succeeding year for awarding a prize to a student of the Government P.V. High School, Perumkulam, who has passed the S.S.L.C. Examination during the previous year in the first attempt securing the highest number of marks.

6. The prize shall be awarded in cash on the occasion of School Day Celebration or any other occasion in the academic year as decided by the Administrator.

7. If, in any year, two or more pupils secure the same number of highest marks, then the amount shall be divided equally among them and the prizes awarded accordingly.

8. Requisition for payment of annual interest shall be send by the Administrator at any time not later than two months prior to the date fixed for the award of the prize and the Treasurer of Charitable Endowments shall thereupon arrange to place the annual interest at the disposal of the Administrator.

9. If the interest is not utilised as provided in clause 5 or if the prize is not awarded owing to the non-availability of a suitable candidate or for any other reason, or any balance is left after awarding the prize, such amount shall be added on to the corpus of the fund by the Treasurer of Charitable Endowments unless its payment is allowed by the Treasurer in exceptional cases on the specific recommendation of the controlling authority specified in clause 10.

10. If any doubt or dispute arises regarding the meaning or interpretation of the Scheme, it shall be referred to the Director of Public Instruction, whose decision thereon shall be final.

SCHEDULE

Name of Endowment	Details of Property
(1)	(2)
"Tharamel R. Balakrishna Pillai Endowment Fund".	Rs. 1,000 (Rupees one thousand only)

By order of the Governor,

A. RAMASWAMY PILLAI,
Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Sri. R. Balakrishna Pillai, Retired Teacher, Government High School for boys, Kottarakara wishes to institute an endowment in his name in Government P.V.H.S. Perumkulam, Kottarakara. A preliminary notification regarding this has been published in the Gazette dated 18-1-1983. Now Government have accepted the endowment for institution and hence this notification.

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G. O. Ms. No. 52/83/H. Edn. *Dated, Trivandrum, 15th March* 1983.

S.R.O No. 466/83.—In exercise of the powers conferred by subsection (1) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following scheme for administration of the said property, the same having been previously published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966 and appoint the date of publication of this notification to be the date on which the said scheme shall come into operation, namely -

പദ്ധതി

1. ഈ എൻഡോവ്മെന്റിന്റെ പേര് "റവ: ഫാദർ ജോസ് മാത്യു എൻഡോവ്മെന്റ്" എന്നായിരിക്കുന്നതാണ്.

2. ഈ എൻഡോവ്മെന്റിന്റെ മുതൽ ആയ 1,001 രൂപ (ആയിരത്തി ഒന്നു രൂപ മാത്രം) കേരള ചാരിറ്റബിൾ എൻഡോവ്മെന്റ് ട്രഷററിൽ നിക്ഷിപ്തമായിരിക്കും.

3. മേൽപ്പറഞ്ഞ തുക കേന്ദ്ര ഗവൺമെന്റിന്റെയോ, കേരള ഗവൺമെന്റിന്റെയോ സെക്യൂരിറ്റികളിലോ, ഗവൺമെന്റ് അംഗീകരിച്ച മറ്റു സെക്യൂരിറ്റികളിലോ നിക്ഷേപിക്കേണ്ടതാണ്.

4. തിരുവനന്തപുരം വിദ്യാഭ്യാസ ജില്ലയിൽപ്പെട്ട നാലാഞ്ചിറ സെന്റ് ജോൺസ് മോഡൽ ഹൈസ്കൂൾ ഹെഡ്മാസ്റ്റർ ഈ എൻഡോവ്മെന്റിന്റെ ഭരണാധികാരി ആയിരിക്കും.

5. ഈ എൻഡോവ്മെന്റിന്റെ മുതലിൽ നിന്നും ലഭിക്കുന്ന പലിശ യഥാക്രമം 40 : 30 : 30 എന്ന അനുപാതക്രമത്തിൽ നാലാഞ്ചിറ സെന്റ് ജോൺസ് മോഡൽ ഹൈസ്കൂളിൽ നിന്നും എസ്. എസ്. എൽ. സി., ഒമ്പതാം സ്റ്റാൻഡേർഡ്, എട്ടാം സ്റ്റാൻഡേർഡ് എന്നിവയുടെ വാർഷിക പരീക്ഷകളിൽ ഏറ്റവും കൂടുതൽ മാർക്കുവാങ്ങി വിജയിക്കുന്ന കുട്ടികൾക്ക് സ്കോളർഷിപ്പുകൾ കൊടുക്കുന്നതിന് വിനിയോഗിക്കേണ്ടതാണ്.

6 ഏതെങ്കിലും വിഭാഗത്തിൽ അർഹരായ ഒന്നിലധികം കുട്ടികളുണ്ടെങ്കിൽ പ്രസ്തുത വിഭാഗത്തിലേക്ക് നീക്കിവച്ചിട്ടുള്ള തുക അങ്ങനെ അർഹരായ കുട്ടികൾക്ക് തുല്യമായി വിഭജിച്ചു നൽകേണ്ടതാണ്.

7. സ്കോളർഷിപ്പുകൾ സ്കൂൾ വാർഷിക ദിവസമോ ഭരണാധികാരിക്കു യുക്തമെന്നു തോന്നുന്ന മറ്റേതെങ്കിലും സന്ദർഭത്തിലോ സ്കൂളിൽ ചേരുന്ന പൊതുയോഗത്തിൽവച്ച് പണമായിട്ടുതന്നെ നൽകേണ്ടതും ആ വിവരം ഒരു പൊതു വിജ്ഞാപനമായി സ്കൂൾ നോട്ടീസ് ബോർഡിൽ പരസ്യപ്പെടുത്തേണ്ടതുമാണ്.

8 സ്കോളർഷിപ്പ് വിതരണം സംബന്ധിച്ച കണക്കുകളും വൗച്ചറുകളും ഭരണാധികാരി സൂക്ഷിക്കേണ്ടതും പരിശോധനയ്ക്ക് ആവശ്യപ്പെടുമ്പോൾ ഹാജരാക്കേണ്ടതുമാണ്. സ്കോളർഷിപ്പിന് അർഹരായ വിദ്യാർത്ഥികളുടെ പേരുവിവരവും സ്കോളർഷിപ്പ് വിതരണത്തെ സംബന്ധിച്ചുള്ള മററ് വിവരങ്ങളും ഓരോ അദ്ധ്യയന വർഷത്തിന്റെയും അവസാനം വിദ്യാഭ്യാസ ഡയറക്ടറെ അറിയിക്കേണ്ടതാണ്.

9 സ്കോളർഷിപ്പുകൾ നൽകാൻ ഉദ്ദേശിക്കുന്ന തീയതിക്കു രണ്ടു മാസം മുമ്പ് എൻഡോവ്മെന്റിന്റെ ഭരണാധികാരി പലിശ കിട്ടുന്നതിനുള്ള അപേക്ഷ കേരള ചാരിററബിൾ എൻഡോവ്മെന്റ് ട്രഷറർക്കു അയക്കേണ്ടതും അതിൻപ്രകാരം ട്രഷറർ വാർഷികപലിശ ഭരണാധികാരിക്ക് അയച്ചുകൊടുക്കേണ്ടതുമാണ്.

10. അഞ്ചാം വകുപ്പിൽ പറയുന്ന പ്രകാരം ഏതെങ്കിലും വർഷം സ്കോളർഷിപ്പു വിതരണം ചെയ്യാതെ വരികയോ സ്കോളർഷിപ്പ് വിതരണം ചെയ്തശേഷം പലിശയിൽ വല്ല തുകയും ബാക്കി വരികയോ ചെയ്താൽ അങ്ങനെയുള്ള തുക കൂടി മുതലിനോട് ചേർക്കേണ്ടതാണ്.

11. മുകളിൽ വിവരിച്ചിട്ടുള്ള നിബന്ധനകളിൻമേൽ ഏതെങ്കിലും തർക്കങ്ങളോ സംശയങ്ങളോ ഉണ്ടാകുന്ന പക്ഷം അതിൻമേൽ അവസാന തീരുമാനം എടുക്കുന്നതിനുള്ള അധികാരം വിദ്യാഭ്യാസ ഡയറക്ടറിൽ നിക്ഷിപ്തമായിരിക്കുന്നതാണ്.

പട്ടിക

എൻഡോവ്മെന്റിന്റെ പേര്	സ്വത്തുവിവരം
(1)	(2)
റവ: ഫാദർ ജോസ് മാത്യു എൻഡോവ്മെന്റ്	രൂപ 1,001 (രൂപ ആയിരത്തൊന്ന് മാത്രം)

ഗവർണ്ണറുടെ ഉത്തരവു പ്രകാരം,
ഏ. രാമസ്വാമിപിള്ള,
ഗവൺമെന്റ് ജോയിന്റ് സെക്രട്ടറി.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport.)

Rev. Fr. Jos Mathew, Retired Principal, M. T. T. College, Trivandrum, wishes to institute an endowment in St. John's Model High School, Nalanchira. A preliminary notification regarding this has been published in the Gazette dated 18-1-1983. Now Government have accepted the endowment for institution and hence this notification

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G. O. MS. No.45/83/H.Edn. *Dated, Trivandrum, 7th March* 1983.

S.R.O.No. 467/83.—In exercise of the powers conferred by subsection (1) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the Schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala, and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following Scheme for administration of the said property, the same having been previously published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966, and appoint the date of publication of this notification to be the date on which the said Scheme shall come into operation, namely:—

Scheme

1. This Endowment may be called "Professor P. G. Godavarma Raja Endowment Fund".

2. The corpus of the Endowment shall consist of Rs. 4477.40 (Rupees Four thousand four hundred and seventy-seven and paise forty only) and shall be vested with the Treasurer of Charitable Endowments, Kerala.

3. The corpus of the Endowment shall be invested in any long term securities of the Government of India or the Government of Kerala or in any of the securities approved by the Government of Kerala.

4. The Principal, Government College, Trichur shall be the Administrator of the Fund.

5. The annual interest accruing on the fund shall be utilised during the succeeding year for awarding two prizes in cash to—

(i) a student of the Ist year B. A. Degree class of Government College, Trichur who has chosen History as the main subject and who secures the highest number of marks in History in the Ist B. A. Degree Examinations of the University; and

(ii) a student of the IInd B. A. Degree class of the Government College, Trichur who has chosen History as the main subject and who secures the highest number of marks in History in the II B. A. Degree Examination of the University.

6. If, in any year, more than one student of the college is found eligible for the award by securing the same number of marks, in the I year or II

year B.A Degree Examinations as the case may be the amount shall be divided equally among them.

7. If the scheme of the examination changes and if the University does not hold examination during the first and second year, the marks secured by the student in the examination conducted by the college shall be considered for giving the award.

8. The cash awards shall be given on the occasion of the College Day celebrations or on any other suitable occasion in the academic year as decided by the Administrator and thereafter the fact of such award with relevant particulars thereof shall be published in the notice board of the college.

9. Requisition for payment of annual interest shall be send by the Administrator to the Treasurer of Charitable Endowments two months prior to the date fixed for the award and the Treasurer of the Charitable Endowments shall, thereupon arrange to place the annual interest at the disposal of the Administrator.

10. If, in any year the interest is not utilised as provided in clause 5 above, or if the prize is not awarded owing to the non-availability of a suitable candidate, or for any other reason such amount shall be added on to the corpus of the fund by the Treasurer of the Charitable Endowments unless its payment is allowed by the treasurer in exceptional cases on the specific recommendation of the controlling authority specified in clause 11.

11. If any doubt or dispute arises regarding the meaning and interpretation of the provision of the Scheme it shall be reference, to the Director of Collegiate Education, whose decision there upon shall be final.

SCHEDULE

Name of Endowment (1)	*Details of property* (2)
"Professor P. G. Godavarma Raja Endowment Fund"	Rs 4477.40 (Rupees Four thousand four hundred and seventy seven and paise forty only)

By order of the Governor,

A. RAMASWAMY PILLAI,
Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport.)

The Secretary, Godavarma Raja Endowment Committee, Government College, Chittur wishes to Institute an endowment in the name of Sri P. G. Godavarma Raja in the Government College, Chittur, Palghat. A Preliminary notification regarding this has been published in the Gazette dated 30-11-1982. Now Government have accepted the Endowment for Institution and hence this notification.

———

Kerala Gazette No. 16 dated 19th April 1983.
PART IA

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 929/EL1/83/Elec. *Dated Trivandrum, 25th February* 1983.

Notification No. 82/KL-LA/4/82 dated 14-2-1983 of the Election Commission of India is published.

By order,

J. S. JESUDHASAN,
*Chief Electoral Officer
and Special Secretary to Government.*

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001,
Dated, 14th February 1983.

NOTIFICATION

No. 82/KL-LA/4/82—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala dated 22nd October, 1982 in Election Petition No. 4 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present

The Honourable Dr. Justice T. Kochu Thommen

Friday, the 22nd October, 1982/30th Asvina, 1904

ELECTION PETITION No. 4/82

Petitioner.

P. Ramakrishanan, 39 Years, S/o Kunhiraman,
R. K. House, Azhikode, Cannanore-9.
By Advocates M/s. P. N. K. Achan, K. Vijayan,
P. N. Ravindran.

Respondents.

1. K. P. Nooruddeen,
   Minister for Forest,
   Secretariat, Trivandrum.
2. K. Kunhikannan,
   Correspondent,
   Janmabhumi,
   Press Club,
   Cannanore.

R I By Advocates M/P. V. Aiyyappan,
P. V. Madhavan Nambiyar,
N. P. Samual,
P. V. Ghandramohan.

This Election Petition having been finally heard on 18-10-1982 and having stood to this day for consideration this court deliver the following:

JUDGMENT

The petitioner prays for a declaration that the election of the 1st respondent to the Kerala State Legislative Assembly from No. 15 L. A. Peraveer Constituency was void and that the petitioner has been duly elected. In the election held on 19.5-1982, the result of which was declared on the following day, the 1st respondent who contested as a candidate of the Indian National Congress (A) secured 36,903 votes, while the petitioner, a candidate of the Indian National Congress (S) secured 36,777 votes. The 1st respondent thus secured 126 votes more than the petitioner.

2. The principal allegations of the petitioner are: A good number of invalid votes were counted as valid votes in favour of the 1st respondent. More than 200 ballot papers which had not been sealed, but which contained a smudge of ink against the name of the 1st respondent were counted as valid votes in his favour. A number of ballot papers which did not have the seal or signature of the Presiding Officer were counted as valid votes of the 1st respondent. At least 200 persons who had not attained the age of 21 on 1-1-1982 voted in the election. At booth No. 26 K. K. Narayanan, son of Kannan, (Voter No. 177) was not allowed to vote on the ground that he had no vote. 30 residents in Ward Nos. 1 and 2 in Koadali Panchayat were prevented from voting as their names were entered in Ward No. 11 which was 12 miles away from their Wards. T. P. Ibrayan, son of Pokkor, (Voter No. 392) had to tender his vote as in his name U. Abdurahiman had already voted. About 50 persons voted in more than one polling station because of the duplication of names. The bundling of votes was improperly done. The Petitioner's votes were packed in the 1st respondent's bundle. 24 instances of such mistakes were pointed out by the petitioner's agent and were corrected. But other instances pointed out by the petitioner's counting agnets were not corrected. The attitude of the Returning Officer towards the petitioner was hastile. The objection filed by the petitioner's election agent was not considered by the Returning Officer. Without passing any order disposing of that objection; the Returning Officer declared the result of the election. For these reasons the petitioner contends that the result of the election of the 1st respondent is void and that the petitioner is entitled to be declared to have been duly elected.

3. These allegations are denied by the 1st respondent who alone has filed a written statement. He says that the election of the 1st respondent is not liable to be declared void nor the petitioner entitled to be declared elected. He denies that invalid votes were counted in his favour. He contends that the smudge of ink in the ballot paper made with instrument given by the polling officer has to be treated as valid vote in favour of the candidate against whose name the impression appears. He, however, says that it is not correct that there were more than 200 such votes. He points out that the validity of a vote is not affected merely because of the absence of the signature of the Presiding Officer. In any case, he says, no objection had been raised to the reception of such votes. He denies the allegation that a good number of persons who had not attained the age of 21 on 1-1-1982 voted in the election. No onjection was raised by the petitioner or his agent on that ground. As regards the allegation that K. K. Narayanan was not allowed to vote. The 1st respondent points out that the real voter No. 177 of Polling Station No. 26 had in fact voted. The allegation that 30 persons of Ward No. 2 were included in the electoarl roll of Ward No. 11 is vague. The petitioner had not raised any objection to their inclusion when the draft rolls were published. Those persons them-

selves had not raised any objection to their inclusion in Ward No. 11. No objection was raised by the petitioner or his agent as to the identity of U. Abdurahiman who is alleged to have voted as No. 392 in Booth No. 24. It is not likely that he would have cast his vote in the name of T. P. Ibrayan (of No. 392) because Abdurahiman himself is a voter in the same polling station with the Serial No. 228. The allegation of double voting is denied. The bundling of votes was done according to the rules. All allegations to the contrary are specifically denied. No complaint had been made by the petitioner at the relevant time. The 1st respondent points out that the petitioner's allegations against the Returning Officer are absolutely without foundation.

4. On the basis of the above avarments the following issues were raised in the presence of counsel on both sides and after discussing the same with them:

(1) Whether the petition is not prepared and presented in accordance with the rules and hence not maintainable?

(2) Whether any invalid vote has been received or counted in favour of the 1st respondent and if as, whether it has materially affected the election?

(3) Are the alleged infirmaties in the supplementary electoral roll established and if so whether they have materially effected the result of the election of the 1st respondent?

(4) Whether the validity of the electoral roll can be considered in this petition?

(5) Whether the various irregularities alleged in the petition are true, and if so have they materially affected the result of the election of the 1st respondent?

(6) Did the petitioner file any objection before the Returning Officer and if as was it disposed of in accordance with law?

(7) Is the election of the respondent void for all or any of the reasons mentioned in the petition?

(8) Is the petitioner entitled to get a declaration that he is duly eleted as claimed in the petition?

(9) What is the proper order as to costs?

(10) To what reliefs are the parties entitled?

5. *Issue* No. 1. That the petition has been prepared and presented in accordance with the law is no longer disputed on behalf of the 1st respondent. In the cirumstances I hold that the petition is maintainable. Issue No. 1 is accordingly decided in favour of the petitioner.

6. *Issues* 3 and 4. It is stated in the petition that about 200 persons who had not attained the age of 21 years on 1-1-1982 were placed on electoral roll. The names of these persons are not mentioned in the petition.

Neither the petitioner who deposed as P.W.1 nor his Chief Election Agent (P. W. 2) has given any information on this question. It is a vague allegation in regard to which no attempt has been made to adduce any evidence. On the other hand the 1st respondent has emphatically asserted as R.W.1 that to his knowledge not a single minor has voted in the election. All this apart, the validity of an electoral roll is not relevant to an election petition. That is a question which it is not open to the petitioner to agitate in the present proceeding. Admittedly the persons who had voted were those names were on the electoral roll. Admittedly whose again the petitioner had not taken any steps to challenge the inclusion of their names on the roll. Once the electoral roll has been finalised. Means of an election petition. As stated by the Supreme Court in *Kabul Singh* V. *Kundan Singh* (A.I.R. 1970 S.C. 340, 343) :

> " .... the entries found in the electoral roll are final and they are not open to challenge either before a Civil Court or before a Tribunal which considers the validity of an election.
>
> ...... the finality of the electoral roll cannot be challenged in a proceeding challenging the validity of the election."

(See also *Hari Prasad Mulshankar Trivedi* V. *V. B. Raju*—A.I.R. 1973 S.C. 2602; *Wopansaos* V. *N. L. Odyou*—A.I.R. 1971 S. C. 2123; *Roop Lal Mehta* V. *Dhan Singh*—A.I.R. 1968 Punjab (1). Issues 3 and 4 are accordingly found against the petitioner.

7. *Issues 2 and 5*.—The petitioner further contends that a number of votes which were invalid for the reason that the ballot papers were not properly marked with the seal, but which only bore the smudge of ink, were counted as valid votes in favour of the 1st respondent. The petitioner has frankly admitted when deposing as P.W.1 that he has no personal knowledge of what took place durning counting, for he was present in the counting hall for only 10 minutes. His information is based on what he has been told by his Chief Election Agent. The evidence of the petitioner is purely hearsay and it has therefore no value.

8. The Chief Election Agent has deposed as P. W. 2. He has no case that the smudge of ink was not seen against the name and symbol of the 1st respondent. In fact he admits that a number of votes were counted in favour of the 1st respondent because the smudge was seen against his name. This is what he says:

"... ....

This is in fact the case stated by the petitioner in the Election petition. P. W. 2, however, says that in some cases the smudge was in blue ink. This is not stated in the election petition. The Petitioner himself has no case that the smudge was made otherwise than by the seal given by the polling officer for marking the ballot papers. He admits in his evidence that at the polling station that was the only way a ballot paper could be

marked. P. W. 2's suggestion that blue ink was used is incredible particularly because there is no other evidence to support it. If blue ink has been used, as now stated by P. W. 2, it would have been highlighted in the petition itself. The fact that the petitioner never mentioned it in his evidence shows that such a fact had not been brought to his notice by any person. The petitioner was content to limit the evidence on his side purely to what he and P. W. 2 have deposed in Court. The Polling Officers who could have spoken to the ink used for marking the ballot papers were not examined. P. W. 2 does not say at which counting table the ballot papers with the blue ink were seen and which polling station they came from. No counting agent or counting officer or Returning Officer was examined. Not a single document has been produced. At the end of P. W. 2's evidence Shri P. N. K. Achan, appearing for the petitioner, submitted that the petitioner did not propose to adduce any further evidence. The petitioner's evidence was thus closed. On the evidence adduced the petitioner has failed to show that the smudge of ink, which is said to be seen on the ballot papers against the name and symbol of the 1st respondent had been marked otherwise than by means of the seal supplied for the purpose by the polling officers.

9. The evidence of P. W. 2 has not been corroborated by any other reliable evidence. The interested testimony of P. W. 2 stands contradicted by another interested testimony, viz., that of the I respondent. He denies that the ballot papers contained only the smudge of ink. He also denies that any one of the ballot papers counted in his favour was not properly marked by means of the instrument supplied for the purpose or that any one of them did not bear the seal of the Presiding Officer. This is the only evidence on the point. Assuming that the petitioner's contention that the only mark that was seen against the name of the I respondent in a number of ballot papers was but a smudge of ink is correct, even so the petitioner has no case that that smudge did not appear in the proper column assigned to the I respondent or that it had been made by any other instrument than the one supplied for the purpose of voting by the Presiding Officer. In the absence of any evidence to the contrary it has to be presumed that the intention of the voter in putting the smudge with the instrument supplied for the purpose. in the column assigned to the I respondent was to give his vote for the I respondent. [See Rule 39 (2) (b) and the second proviso to Rule 56 of the Conduct of the Election Rules, 1961]. All such votes were therefore vaild votes cast in favour of the I respondent and were accordingly rightly counted in his favour.

10. The only other irregularity that has been spoken to by P. W. 2 is that on two or three occasions the petitioner's votes were bundled with those of the I respondent, but on those occassions they were immediately detected and retrieved. There is no specific contention that similar mistakes had been made in other bundles, although P. W. 2 suggests that similar mistakes had been repeated in other bundles and hence a recount application

was given by the petitioner. No evidence has been adduced to show that any other bundle of the I respondent contained votes of the petitioner. There is no specific reference to the tables at which the bundles were irregularly tied up, or the polling stations from which those votes came. In the absence of any evidence, the extremely vague suggestions made by P. W. 2 has no credibility. Non of the alleged irregularities has been proved.

11. The petitioner's allegation of bias against the Returning Officer is totally with out foundation. The allegation that a number of ballot papers not bearing the signature of the Presiding Officer of the respective polling station were counted in favour of the I respondent has not been established. Apart from the interested testimony of P. W. 2 there is no other evidence to support it. These are, in my view, wild allegations irresponsibly made without making any serious effort to prove them.

12. In the circumstances Issues 2 and 5 are found against the petitioner.

13. *Issue No. 6.* There is no reliable evidence as to whether, and if so when, the petitioner filed a written objection before the Returning Officer. P.W.2 claims to have filed a written objection shortly before the announcement of the result. He says that the result was announced by the Returning Officer without passing any order thereon. No attempt has been made by the petitioner to call for this document. If such a document was in fact filed by him, it would in all probability show whether an endorsement has been made on it to the effect that it has been disposed of by the Returning Officer. The Returning Officer has not been examind or cited by the petitioner as a witness. His evidence on the point would have been crucial. If a written objection had been filed in time it is unbelievable that it was not disposed of by the Returning Officer on the merits. If it was filed out of time it was in all probability rejected for that reason. In the absence of any evidence to show that any such objection was presented by or on behalf of the petitioner before the Returning Officer the burden to prove which is upon the petitioner—I find Issue No. 6 against the petitioner.

14. *Issue No. 7.* There is no evidence to prove that the election of the 1st respondent is void for any of the alleged reasons. Although a number of allegations have been made in the Election Petition, none of them, apart from what I have referred to above, has been spoken to by the petitioner himself as P. W. 1 or his Chief Election Agent as P. W. 2. No other witness has deposed on the side of the petitioner. No document has been produced on his side. The petitioner has therefore failed to prove any one of the many allegations contained in the petition. There is no evidence that the result of the election, in so far as it concerns the 1st respondent, has been materially affected by reason of improper reception, refusal or rejection of any vote or the reception of any vote which is void or by reason of non-compliance with the provisions of the law. Issue No. 7 accordingly found against the petitioner.

15. *Issues No. 8 to 10.* For the reasons stated by me the petitioner is not entitled to the declarations sought. He is not entitled to any relief in this proceeding. The Election petition is accordingly dismissed. The petitioner shall pay to the Ist respondent a sum of Rs. 2,000 as his costs, towards which the amount deposited by the petitioner in this Court shall be adjusted.

16. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the speaker of the Kerala Legislative Assembly and shall thereafter send as urgently as possible an authenticated copy of this judgement to the Election Commission, as required under Section 103 of the Representation of the People Act, 1951.

(Sd.)

22nd October, 1982.

T. KOCHU THOMMEN,
Judge.

Appendix

Petitioners Exhibits : Nil

Respondents Exhibits : Nil

Petitioner's witnesses :

P.W. 1 Shri Ramakrishnan, Petitioner

P.W. 2 Sri V.P.G. Nambiar

Respondents witness :

R.W. 1 Sri K.P. Nooruddeen.

Costs to the 1st respondent Rs. 2,000

By order,

(Sd.)

V. K. RAO,
Under Secretary to the Election Commission of India.